

Message Text

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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-07 NSAE-00 EPG-02 FAA-00
INRE-00 L-03 SS-15 NSC-05 NSCE-00 /054 R

DRAFTED BY EB/AN:JMAGNOR
APPROVED BY EB/AN:RABROWN
CAB:ERODRIGUEZ
EUR/NE:NLACHILLES

-----181636Z 000892 /43

O 181633Z JUN 77
FM SECSTATE WASHDC
TO AMEMBASSY LONDON IMMEDIATE

C O N F I D E N T I A L STATE 142348

E.O. 11652: GDS

TAGS: EAIR, UK

SUBJECT: US/UK CIVAIR NEGOTIATIONS: SUSPENSION OF SERVICE

REF: O'MELIA-RODRIGUEZ TELECON JUNE 17/77

FOR O'MELIA (US CIVAIR DEL)

1. BY AGREEMENT FILED WITH THE CAB MAY 12, 1977, UNDER
SECTION 412 OF THE ACT, VARIOUS U.S. SCHEDULED CARRIERS
AGREED TO "RECOMMEND TO THE U.S. GOVERNMENT THAT:

(A) UNLESS A LONG-TERM AGREEMENT ARRIVED AT BEFORE
JUNE 22, 1977, OR EXISTING AGREEMENT EXTENDED, AND
ACCEPTABLE UNDERSTANDING GOVERNING CHARTERS REACHED,
THE U.S. GOVERNMENT (UNDERLINED) TAKE ALL ACTION
NECESSARY TO SUSPEND SCHEDULED AND NONSCHEDULED
AUTHORITY OF ALL U.K. AND ALL U.S. CARRIERS (UNDERLINED)

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BETWEEN U.S. AND U.K., EXCEPT U.S.-BERMUDA AND
CARIBBEAN SERVICES.

(B) THE U.S. GOVERNMENT TAKE ALL ACTION NECESSARY
EFFECTIVELY TO PREVENT INCREASE IN SERVICE OR CAPACITY
BY CARRIERS OF THIRD COUNTRIES SO LONG AS U.S.-U.K.
CARRIER SERVICE IS SUSPENDED.

(C) IF ALL OF RECOMMENDED ACTIONS TAKEN WITH RESPECT TO ALL SCHEDULED AND NONSCHEDULED (UNDERLINED) CARRIERS DESCRIBED, SO LONG AS SUCH ACTIONS REMAIN IN EFFECT, AGREEMENT CARRIERS WAIVE THEIR RIGHTS OF NOTICE AND HEARING PURSUANT TO SECTION 401 OF ACT, WITH RESPECT TO TEMPORARY SUSPENSION OF AUTHORITY.

2. BOARD ORDER 77-2-119 APPROVED CARRIER DISCUSSIONS, WITH RESTRICTIONS, "LIMITED TO THE SUBJECT MATTER OF THOSE TEMPORARY STEPS THAT THE CARRIERS MIGHT TAKE IN SUPPORT OF THIS GOVERNMENT'S POSITION..." IN U.K. NEGOTIATIONS. BOARD STATED SPECIFICALLY IN A FOOTNOTE THAT THIS AUTHORIZATION DOES NOT IMPLY THAT A JOINT DISCUSSION LIMITED TO THE DEVELOPMENT OF RECOMMENDATIONS TO GOVERNMENTAL AGENCIES CONCERNING NEGOTIATIONS RAISES ISSUES COGNIZABLE UNDER EITHER SECTION 412 OF ACT OR ANTITRUST STATUTES, OR OTHERWISE REQUIRES APPROVAL OF BOARD (EASTERN RR PRESIDENTS CONF. V. NOERR MOTOR FREIGHT, 365 U.S. 127).

3. IT IS UNANIMOUS OPION OF BOARD STAFF THAT CARRIER AGREEMENT TO RECOMMEND U.S. GOVERNMENT ACTION TO SUSPEND SERVICES AND WAIVING PROCEDURAL RIGHTS IF BOARD TAKES SUCH ACTION (SUBJECT TO UNIMPLEMENTABLE PRE-CONDITIONS) IS NOT A "COOPERATIVE WORKING AGREEMENT" WITHIN THE PURVIEW OF SECTION 412. THEREFORE, IF THE BOARD WERE TO TAKE ACTION AT THIS TIME STAFF RECOMMENDATION WOULD BE TO DISMISS THE APPLICATION. WE PRESUME, HOWEVER, CONFIDENTIAL

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BOARD WILL DEFER SUCH ACTION PENDING PASSING OF CURRENT US-UK CONFRONTATION.

4. FURTHER BOARD STAFF VIEW THAT IN NO WAY COULD POSITIVE ACTION BY BOARD BE MADE TO APPEAR CREDIBLE FOR FOLLOWING REASONS:

(A) WE PRESUME ANY SUCH SUSPENSION WOULD BE RESULT OF U.K. GOVERNMENT ACTION. BOARD HAS NO REPEAT NO AUTHORITY TO SUSPEND U.S. CARRIER SERVICES WITHOUT NOTICE AND HEARING.

(B) UNDER CURRENT EFFECTIVE BILATERALS WITH THIRD COUNTRIES ANY BOARD ACTION TO LIMIT INCREASE AND SERVICE OR CAPACITY BY THIRD COUNTRY CARRIERS WOULD BE HIGHLY QUESTIONABLE AND ARGUABLY INCONSISTENT WITH SECTION 1102 OF ACT.

(C) IN VIEW OF OUTSTANDING EFFECTIVENESS OF U.S.-U.K.

CHARTER MEMORANDUM OF UNDERSTANDING BOARD ACTION
AGAINST NON-SCHEDULED SERVICES OF U.K. CARRIERS HIGHLY
QUESTIONABLE SINCE NO RESTRICTIONS IN CHARTER AREA
TO BE ANTICIPATED. AS NOTED (A) ABOVE, ANY SUCH
ACTION AGAINST U.S. CARRIERS WOULD BE ACTION OF U.K.
GOVERNMENT, NOT BOARD OR U.S. GOVERNMENT.

5. STAFF RECOMMENDATION ON DISPOSITION OF AGREEMENT
TO BE BEFORE BOARD JUNE 17 OR 20. REQUEST YOUR VIEW
ON ACTION, IF ANY, TO BE TAKEN.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, TREATY TERMINATION, AVIATION AGREEMENTS
Control Number: n/a
Copy: SINGLE
Sent Date: 18-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE142348
Document Source: CORE
Document Unique ID: 00
Drafter: JMAGNOR
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770218-1127
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770642/aaaabknk.tel
Line Count: 127
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 9565827a-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 14-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2102584
Secure: OPEN
Status: NATIVE
Subject: US/UK CIVAIR NEGOTIATIONS: SUSPENSION OF SERVICE
TAGS: EAIR, UK, US
To: LONDON
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/9565827a-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009